

AMENDED IN ASSEMBLY JULY 17, 1997

AMENDED IN ASSEMBLY JUNE 30, 1997

AMENDED IN SENATE MAY 19, 1997

AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 956

Introduced by Senator Rosenthal

February 27, 1997

An act to ~~amend Sections 45, 132, 685, 729, 1070.6, 1531, 1774, 1775, 1775.1, 1775.2, 1775.3, 1775.4, 1775.5, 1775.6, 1775.7, 1775.8, 1775.9, 1776, 1779, 12973.6, 12976, and 12976.5 of, and to repeal Section 685.3 of, the Insurance Code, and to amend Sections 12222, 12253, 12255, 12260, 12281, 12302, 12303, 12304, 12305, 12306, 12412, 12413, 12421, 12422, 12423, 12425, 12428, 12429, 12430, 12434, 12435, 12601, 12602, 12633, 12634, 12978, 13151, and 13170 of, and to add Sections 12009, 13171, 13172, 13173, and 13174 to, and to repeal Sections 12411, 12424, 12952, and 12982 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 956, as amended, Rosenthal. Insurance taxation: administration.

Existing law imposes a tax, as specified, upon the gross premiums of insurers and provides for the processing and auditing of tax returns by the Department of Insurance, ~~for the issuing of deficiency assessments and the processing of petitions and refunds by the State Board of Equalization.~~

This bill would, ~~as provided, transfer those tax return processing and auditing duties of the Department of Insurance to the State Board of Equalization, and would appropriate \$907,595 from the General Fund to the board Department of Insurance for the purpose of funding the board's department's performance, for the 1997-98 fiscal year, of the transferred its audit duties.~~

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 45 of the Insurance Code is~~
2 ~~amended to read:~~
3 ~~45. (a) "Electronic funds transfer" means any~~
4 ~~transfer of funds, other than a transaction originated by~~
5 ~~check, draft, or similar paper instrument, that is initiated~~
6 ~~through an electronic terminal, telephonic instrument,~~
7 ~~or computer or magnetic tape, so as to order, instruct, or~~
8 ~~authorize a financial institution to debit or credit an~~
9 ~~account. Electronic funds transfer shall be accomplished~~
10 ~~by an automated clearinghouse debit, an automated~~
11 ~~clearinghouse credit, a Federal Reserve Wire Transfer~~
12 ~~(Fedwire), or an international funds transfer, at the~~
13 ~~option of the insurer.~~
14 ~~(b) For purposes of this section:~~
15 ~~(1) "Automated clearinghouse" means any federal~~
16 ~~reserve bank, or an organization established by~~
17 ~~agreement with the National Automated Clearing House~~
18 ~~Association, that operates as a clearinghouse for~~
19 ~~transmitting or receiving entries between banks or bank~~
20 ~~accounts and that authorizes an electronic transfer of~~
21 ~~funds between those banks or bank accounts.~~
22 ~~(2) "Automated clearinghouse debit" means a~~
23 ~~transaction in which any department of the state, through~~
24 ~~its designated depository bank, originates an automated~~
25 ~~clearinghouse transaction debiting the taxpayer's bank~~
26 ~~account and crediting the state's bank account for the~~
27 ~~amount of tax. Banking costs incurred for the automated~~

clearinghouse debit transaction by the taxpayer shall be paid by the state.

(3) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state’s bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(4) “Fedwire” means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state’s bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the State Board of Equalization and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (2) or (3). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(5) “International funds transfer” means any transaction originated by the taxpayer and utilizing “SWIFT,” the international electronic payment system to transfer funds in which the taxpayer debits its own bank account, and credits the funds to a United States bank that credits the state’s bank account. Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

SEC. 2. Section 132 of the Insurance Code is amended to read:

132. Risk retention groups chartered, incorporated, or licensed in states other than this state and seeking to do business as a risk retention group in this state shall file a notice of operation with the commissioner of its intention to do business in this state. The notice shall be filed with the commissioner within 60 days of the filing by the group of any notice filed with its chartering state of its intention to do business in this state, but in no event may a notice of intended operation be filed with the commissioner less than 60 days prior to the group

~~1 commencing business in this state. In doing business in
2 this state the risk retention group shall observe and abide
3 by the laws of this state including the following:~~

~~4 (a) A risk retention group shall submit to the
5 commissioner all of the following:~~

~~6 (1) A statement identifying the state or states in which
7 the risk retention group is chartered and licensed as a
8 liability insurance company, date of chartering, its
9 principal place of business, and other information;
10 including information on its membership, as the
11 commissioner of this state may require to verify that the
12 risk retention group is qualified under subdivision (k) of
13 Section 130.~~

~~14 (2) A copy of its plan of operations or a feasibility study
15 and revisions of the plan or study submitted to the state
16 in which the risk retention group is chartered and
17 licensed. However, the provision relating to the
18 submission of a plan of operation or a feasibility study does
19 not apply with respect to any line or classification of
20 liability insurance which (A) was defined in the Product
21 Liability Risk Retention Act of 1981 before October 27,
22 1986, and (B) was offered before that date by any risk
23 retention group which had been chartered and operating
24 for not less than three years before that date.~~

~~25 (3) A statement of registration which designates the
26 commissioner as its agent for the purpose of receiving
27 service of legal documents or process.~~

~~28 (4) A registration filing fee shall accompany the
29 statement of registration, which shall be deposited in the
30 Risk Retention Administration Account, which is hereby
31 created within the Insurance Fund. Notwithstanding
32 Section 13340 of the Government Code, moneys in the
33 account are continuously appropriated to the
34 department for purposes of this chapter.~~

~~35 (b) Any risk retention group within this state shall
36 submit to the commissioner all of the following:~~

~~37 (1) Upon commencement of business within this state
38 and annually thereafter, a copy of the group's annual
39 financial statement submitted to the state in which the
40 risk retention group is chartered and licensed which shall~~

1 ~~be certified by an independent public accountant and~~
2 ~~contain a statement of opinion on loss and loss adjustment~~
3 ~~expense reserves made by a member of the American~~
4 ~~Academy of Actuaries or a qualified loss reserve specialist.~~

5 (2) ~~Upon request by the commissioner, a copy of each~~
6 ~~examination of the risk retention group as certified by the~~
7 ~~commissioner or public official conducting the~~
8 ~~examination and all documentation received as part of~~
9 ~~the examination.~~

10 (3) ~~Upon request by the commissioner, a copy of any~~
11 ~~outside audit performed with respect to the risk retention~~
12 ~~group.~~

13 (c) (1) ~~As authorized under the federal Liability Risk~~
14 ~~Retention Act of 1986 (15 U.S.C. Sec. 3902 (a)(1)(B)),~~
15 ~~each risk retention group is liable for the payment of~~
16 ~~premium taxes and taxes on premiums for business done~~
17 ~~or located within this state, and shall report to the State~~
18 ~~Board of Equalization the gross premiums written, less~~
19 ~~returned premiums, on business done within this state.~~
20 ~~The risk retention group is subject to taxation, and any~~
21 ~~applicable fines and nonconformance fees related~~
22 ~~thereto, on the same basis as a foreign admitted insurer.~~
23 ~~Nonconformance fees shall be paid to the department~~
24 ~~and deposited in the Risk Retention Administration~~
25 ~~Account within the Insurance Fund.~~

26 (2) ~~To the extent licensed surplus line brokers are~~
27 ~~utilized pursuant to Chapter 6 (commencing with~~
28 ~~Section 1760) of Part 2, they shall report to the State~~
29 ~~Board of Equalization the premiums for direct business~~
30 ~~for risks resident or located within this state which those~~
31 ~~licensees have placed with or on behalf of, a risk retention~~
32 ~~group not chartered in this state.~~

33 (d) ~~Any risk retention group, its agents and~~
34 ~~representatives shall comply with Article 6.5~~
35 ~~(commencing with Section 790) of Chapter 1 of Part 2.~~

36 (e) ~~Any risk retention group shall comply with the~~
37 ~~laws of this state regarding deceptive, false, or fraudulent~~
38 ~~acts or practices. However, if the commissioner seeks an~~
39 ~~injunction regarding that conduct, the injunction shall be~~
40 ~~obtained from a court of competent jurisdiction.~~

~~(f) Any risk retention group shall submit to an examination upon request by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner of this state.~~

~~(g) Every application form for insurance from a risk retention group and every policy issued by a risk retention group shall contain in 10-point type on the front page and the declaration page, the following notice:~~

~~“NOTICE~~

~~This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.”~~

~~(h) The following acts by a risk retention group are hereby prohibited:~~

~~(1) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in that group.~~

~~(2) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition.~~

~~(i) No risk retention group may offer insurance policy coverage prohibited by Section 533.5 or declared unlawful by the Supreme Court of California.~~

~~(j) The risk retention group shall make its initial registration by filing the materials specified in subdivision (a). The initial registration is valid until December 31 of the year in which it was made, as long as the risk retention group is in compliance with this chapter. To maintain the registration in force, the risk retention group shall continue in compliance with this chapter and shall file the following items with the commissioner on or before December 31 of each year:~~

1 ~~(1) An annual reporting statement on a form~~
2 ~~prescribed by the commissioner.~~

3 ~~(2) An annual renewal fee to be determined by the~~
4 ~~commissioner, limited to the actual cost of administering~~
5 ~~this section, not to exceed three hundred dollars (\$300).~~

6 ~~(3) Any other information required by the~~
7 ~~commissioner to determine whether the risk retention~~
8 ~~group is in compliance with the requirements of this~~
9 ~~chapter.~~

10 ~~(k) The risk retention group shall notify the~~
11 ~~commissioner in writing of any changes in the~~
12 ~~information provided according to subdivision (a) within~~
13 ~~30 days of the effective date of the change.~~

14 ~~SEC. 3. Section 685 of the Insurance Code is amended~~
15 ~~to read:~~

16 ~~685. (a) When by or pursuant to the laws of any other~~
17 ~~state or foreign country any taxes, licenses and other fees,~~
18 ~~in the aggregate, and any fines, penalties, deposit~~
19 ~~requirements or other material obligations, prohibitions~~
20 ~~or restrictions are or would be imposed upon California~~
21 ~~insurers, or upon the agents or representatives of those~~
22 ~~insurers, that are in excess of the taxes, licenses and other~~
23 ~~fees, in the aggregate, or that are in excess of the fines,~~
24 ~~penalties, deposit requirements or other obligations,~~
25 ~~prohibitions, or restrictions directly imposed upon similar~~
26 ~~insurers, or upon the agents or representatives of those~~
27 ~~insurers, of that other state or country under the statutes~~
28 ~~of this state, as long as the laws of the other state or~~
29 ~~country continue in force or are so applied, the same~~
30 ~~taxes, licenses and other fees, in the aggregate, or fines,~~
31 ~~penalties, deposit requirements or other material~~
32 ~~obligations, prohibitions, or restrictions, of whatever~~
33 ~~kind, shall be imposed upon the insurers, or upon the~~
34 ~~agents or representatives of those insurers, of the other~~
35 ~~state or country doing business or seeking to do business~~
36 ~~in California. Any tax, license or other fee or other~~
37 ~~obligation imposed by any city, county, or other political~~
38 ~~subdivision or agency of the other state or country on~~
39 ~~California insurers or their agents or representatives shall~~

~~1 be deemed to be imposed by that state or country within
2 the meaning of this article.~~

~~3 (b) On and after January 1, 1994, and before January
4 1, 1995, every insurer whose annual taxes exceed fifty
5 thousand dollars (\$50,000) shall make payment by
6 electronic funds transfer. On and after January 1, 1995,
7 every insurer whose annual taxes exceed twenty
8 thousand dollars (\$20,000) shall make payment by
9 electronic funds transfer. The insurer shall choose one of
10 the acceptable methods described in Section 45 for
11 completing the electronic funds transfer.~~

~~12 (c) Payment is deemed complete on the date the
13 electronic funds transfer is initiated, if settlement to the
14 state's demand account occurs on or before the banking
15 day following the date the transfer is initiated. If
16 settlement to the state's demand account does not occur
17 on or before the banking day following the date the
18 transfer is initiated, payment is deemed to occur on the
19 date settlement occurs.~~

~~20 (d) (1) Any insurer required to remit taxes by
21 electronic funds transfer pursuant to this section who
22 remits those taxes by means other than an appropriate
23 electronic funds transfer, shall be assessed a penalty in an
24 amount equal to 10 percent of the taxes due at the time
25 of the payment.~~

~~26 (2) If the State Board of Equalization finds that an
27 insurer's failure to make payment by an appropriate
28 electronic funds transfer in accordance with subdivision
29 (b) is due to reasonable cause or circumstances beyond
30 the insurer's control, and occurred notwithstanding the
31 exercise of ordinary care and in the absence of willful
32 neglect, that insurer shall be relieved of the penalty
33 provided in paragraph (1).~~

~~34 (3) Any insurer seeking to be relieved of the penalty
35 provided in paragraph (1) shall file with the State Board
36 of Equalization a statement under penalty of perjury
37 setting forth the facts upon which the claim for relief is
38 based.~~

~~39 SEC. 4. Section 685.3 of the Insurance Code is
40 repealed.~~

~~SEC. 5. Section 729 of the Insurance Code is amended to read:~~

~~729. As used in this article, the following terms have the following meanings:~~

~~(a) “Company” means any person engaging in, or proposing or attempting to engage in, any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative or regulatory authority of the commissioner or the taxing authority of the State Board of Equalization.~~

~~(b) “Examiner” means any individual or firm authorized by the commissioner to conduct an examination under this article.~~

~~(c) “Person” means any person, association, organization, business trust, partnership, limited liability company, or corporation, or any affiliate thereof.~~

~~SEC. 6. Section 1070.6 of the Insurance Code is amended to read:~~

~~1070.6. The withdrawal procedure and fees prescribed by this article shall not be required of a nonsurviving admitted constituent to a merger or consolidation into another admitted insurer in accordance with the applicable statutes and the commissioner’s prior written consent given pursuant to subdivision (c) of Section 1011, provided the commissioner is satisfied by documents, authenticated so as to be admissible in evidence over objection, filed with him or her, that:~~

~~(a) The constituent has discharged all of its liabilities to residents of this state in the manner provided by Section 1071.5;~~

~~(b) There will be an admitted insurer directly available to that constituent’s policyholders: (1) to obtain policy changes and endorsements, (2) to receive payment of premiums and refund unearned premiums, (3) to serve notice of claim, proof of loss, summons, process, and other papers, and (4) for purposes of suit;~~

~~(c) The constituent shall timely file with the commissioner appropriate financial statements reporting~~

~~its insurance business done in this state during the calendar year of the merger or consolidation and shall file with the State Board of Equalization all appropriate tax returns required by law for that period, and shall timely pay all taxes found to be due on account of that business; and~~

~~(d) The constituent has surrendered its current California certificate of authority to the commissioner for cancellation as of the effective date of the merger.~~

~~The withdrawal procedure and fees prescribed by this article shall not be required of an insurer that has been liquidated by a final order of a court of record of this or any sister state, provided a certified copy of that order reciting the fact of liquidation and discharge of all obligations has been filed with the commissioner.~~

~~SEC. 7. Section 1531 of the Insurance Code is amended to read:~~

~~1531. (a) On and after January 1, 1994, and before January 1, 1995, every exchange and its corporate attorney in fact that is considered a single unit whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every exchange and its corporate attorney in fact that is considered a single unit whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The exchange and its corporate attorney in fact considered as a single unit shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.~~

~~(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.~~

~~(c) (1) Any exchange and its corporate attorney in fact considered as a single unit required to~~

1 ~~remit taxes by electronic funds transfer pursuant to this~~
2 ~~section who remits those taxes by means other than an~~
3 ~~appropriate electronic funds transfer, shall be assessed a~~
4 ~~penalty in an amount equal to 10 percent of the taxes due~~
5 ~~at the time of the payment.~~

6 ~~(2) If the State Board of Equalization finds that the~~
7 ~~failure of an exchange and its corporate attorney-in-fact,~~
8 ~~considered as a single unit, to make payment by an~~
9 ~~appropriate electronic funds transfer in accordance with~~
10 ~~subdivision (a) is due to reasonable cause or~~
11 ~~circumstances beyond the exchange's and its corporate~~
12 ~~attorney-in-fact's control, and occurred notwithstanding~~
13 ~~the exercise of ordinary care and in the absence of willful~~
14 ~~neglect, that exchange and its corporate attorney-in-fact~~
15 ~~shall be relieved of the penalty provided in paragraph~~
16 ~~(1).~~

17 ~~(3) Any exchange and its corporate attorney-in-fact~~
18 ~~seeking to be relieved of the penalty provided in~~
19 ~~paragraph (1) shall file with the State Board of~~
20 ~~Equalization a statement under penalty of perjury setting~~
21 ~~forth the facts upon which the claim for relief is based.~~

22 ~~SEC. 8. Section 1774 of the Insurance Code is~~
23 ~~amended to read:~~

24 ~~1774. (a) On or before the first day of March of each~~
25 ~~year the surplus line broker shall file with the State Board~~
26 ~~of Equalization a sworn statement of all business~~
27 ~~transacted under his or her surplus line license during the~~
28 ~~last preceding calendar year. This statement shall contain~~
29 ~~an account of the business done by the surplus line broker~~
30 ~~for the prior year.~~

31 ~~(b) For purposes of this chapter, "business done" or~~
32 ~~"business transacted" under a surplus line broker's~~
33 ~~license means all insurance regarding which that surplus~~
34 ~~line broker is required to file a confidential written report~~
35 ~~with the commissioner or the commissioner's designee~~
36 ~~pursuant to subdivision (a) of Section 1763. If two or more~~
37 ~~persons licensed as surplus line brokers are involved in~~
38 ~~placing a policy, only the one who is responsible for~~
39 ~~negotiating, effecting the placement, remitting the~~
40 ~~premium to the nonadmitted insurer or its~~

~~representatives and filing the confidential written report pursuant to subdivision (a) of Section 1763, shall be considered transacting under his or her surplus line broker's license.~~

~~(e) The date on which the surplus line broker transacting a policy prepares a bill or invoice for payment of all or part of the premiums due, shall be considered the date on which that business was done or transacted, subject to subdivision (d). This date shall be shown on the face of the bill or invoice and shall be referred to as the "invoice date."~~

~~(d) (1) The invoice date shall be no more than 60 days after the policy effective date and no more than 60 days after the insurance was placed with a nonadmitted insurer, except as provided in paragraph (2).~~

~~(2) For purposes of this chapter, the amount of gross premium to be reported, if premiums are billed and payable in installments, shall be the amount of the installment premium, provided the amount and due date of each installment, or the basis for determining each installment, is identifiable in the policy or an endorsement, and either of the following conditions is satisfied:~~

~~(A) Installments under the policy are not billed more frequently than once per month.~~

~~(B) If more than one installment is billed in any month, the State Board of Equalization determines, in its discretion, that the installment billing method used does not unduly burden its ability to accurately determine the amount of premium paid by the insured.~~

~~SEC. 9. Section 1775 of the Insurance Code is amended to read:~~

~~1775. All reports and statements shall be made on blanks furnished to the surplus line broker by the State Board of Equalization on application therefor.~~

~~SEC. 10. Section 1775.1 of the Insurance Code is amended to read:~~

~~1775.1. (a) For the calendar year 1995, and each calendar year thereafter, every surplus line broker whose annual tax for the preceding calendar year was five~~

~~1 thousand dollars (\$5,000) or more shall make monthly~~
~~2 installment payments on account of the annual tax on~~
~~3 business done during the current calendar year imposed~~
~~4 by Section 1775.5.~~

~~5 (b) Notwithstanding any other provision, the State~~
~~6 Board of Equalization may relieve a surplus line broker~~
~~7 of his or her obligation to make monthly payments where~~
~~8 the broker establishes to the satisfaction of the State~~
~~9 Board of Equalization that either the broker has ceased~~
~~10 to transact business in this state, or his or her annual tax~~
~~11 for the current year will be less than five thousand dollars~~
~~12 (\$5,000).~~

~~13 SEC. 11. Section 1775.2 of the Insurance Code is~~
~~14 amended to read:~~

~~15 1775.2. On or before February 1 of each year, the~~
~~16 State Board of Equalization shall mail to every surplus~~
~~17 line broker the installment payment forms prescribed by~~
~~18 the State Board of Equalization to accompany surplus line~~
~~19 tax remittances if monthly installment payments are~~
~~20 required by Section 1775.1. Failure to secure those forms~~
~~21 shall not relieve any broker from making or paying~~
~~22 monthly installment payments.~~

~~23 SEC. 12. Section 1775.3 of the Insurance Code is~~
~~24 amended to read:~~

~~25 1775.3. Each surplus line broker required to make~~
~~26 monthly installment payments shall remit them on or~~
~~27 before the first day of the third calendar month following~~
~~28 the end of the accounting month in which the business~~
~~29 was done. The annual payment under Section 1775.5 shall~~
~~30 be in lieu of an installment payment under this section for~~
~~31 the accounting month of December. Remittances for~~
~~32 those payments shall be made payable to the State Board~~
~~33 of Equalization and shall be made by electronic funds~~
~~34 transfer in accordance with Section 1775.8, or if~~
~~35 remittance by electronic funds transfer is not mandatory~~
~~36 under Section 1775.8, delivered to the State Board of~~
~~37 Equalization, accompanied by an installment payment~~
~~38 form prescribed by the State Board of Equalization.~~

~~39 SEC. 13. Section 1775.4 of the Insurance Code is~~
~~40 amended to read:~~

~~1775.4. (a) The amount of the payment shall be 3 percent of the gross premiums less return premiums upon business done by the surplus line broker under the authority of his or her license during the calendar month ending two calendar months immediately preceding the due date of the payment, as specified in Section 1775.3, excluding gross premiums and return premiums paid by him or her upon business governed by the provisions of Section 1760.5. If during any calendar month those return premiums upon business done by a surplus line broker exceed the gross premiums upon the business done by him or her in that calendar month, then no payment shall be payable by him or her in respect to that calendar month, and he or she may carry forward that excess to the next succeeding calendar month or months and apply it in reduction of the taxable premiums on business done by him or her in that succeeding calendar month or months. Even though no payment shall be payable by the broker, he or she shall file a return with the State Board of Equalization showing that his or her return premiums exceeded his or her gross premiums.~~

~~(b) In determining the applicability of subdivision (a) of Section 1775.1 to a surplus line broker who has acquired the business of another surplus line broker, the amount of tax liability of the acquired broker for the immediately preceding calendar year shall be added to the amount of the tax liability of the acquiring broker for the immediately preceding calendar year.~~

~~(c) All amounts paid, other than penalties and interest, shall be allowed as a credit on the annual tax imposed by Section 1775.5.~~

~~(d) If the total amount of monthly installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of annual tax and be allowed as a credit or refund.~~

~~(e) A penalty of 10 percent of the amount of the monthly payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the~~

1 ~~rate of 1 percent per calendar month or fraction thereof~~
2 ~~from the due date of the payment until the date payment~~
3 ~~is received by the State Board of Equalization, but not for~~
4 ~~any period after the due date of the annual tax. The State~~
5 ~~Board of Equalization may remit the penalty in a case~~
6 ~~where it finds, as a result of examination or otherwise, that~~
7 ~~the failure of, or delay in, payment arose out of excusable~~
8 ~~mistake or excusable inadvertence.~~

9 (f) ~~For any part of a payment required that was not~~
10 ~~made within the time required by law, when the~~
11 ~~nonpayment or late payment was due to fraud on the part~~
12 ~~of the surplus line broker, a penalty of 25 percent of the~~
13 ~~amount unpaid shall be added thereto, in addition to all~~
14 ~~other penalties otherwise imposed.~~

15 (g) ~~The State Board of Equalization, upon a showing~~
16 ~~of good cause, may extend for not to exceed 10 days the~~
17 ~~time for making a monthly payment. The extension may~~
18 ~~be granted at any time, provided that a request therefor~~
19 ~~is filed with the State Board of Equalization within or~~
20 ~~prior to the period for which the extension may be~~
21 ~~granted. No interest shall be paid for the period of time~~
22 ~~for which the extension is granted.~~

23 ~~SEC. 14. Section 1775.5 of the Insurance Code is~~
24 ~~amended to read:~~

25 ~~1775.5. Every surplus line broker shall annually, on or~~
26 ~~before the first day of March of each year pay to the State~~
27 ~~Board of Equalization for the use of the State of California~~
28 ~~a tax of 3 percent of the gross premiums less return~~
29 ~~premiums upon business done by him or her under~~
30 ~~authority of his or her license during the preceding~~
31 ~~calendar year, excluding premiums upon business done~~
32 ~~by the provisions of Section 1760.5. If during any calendar~~
33 ~~year 3 percent of the return premiums upon business~~
34 ~~done by a surplus line broker exceed 3 percent of the~~
35 ~~gross premiums upon the business done by him or her in~~
36 ~~that year, then he or she may either carry forward the~~
37 ~~excess to the next succeeding year and apply it as a credit~~
38 ~~against 3 percent of gross premiums on the business done~~
39 ~~by him or her in the succeeding year, or he or she may~~
40 ~~elect to receive, and thereupon be paid a refund equal to~~

~~the amount of taxes theretofore paid by him or her on the excess of return premiums paid over gross premiums received.~~

~~For the purpose of determining the tax, the total premium charged for all nonadmitted insurance placed in a single transaction with one underwriter or group of underwriters, whether in one or more policies, shall be allocated to this state in that proportion as the total premium on the insured properties or operations in this state, as computed on the exposure in this state on the basis of any single standard rating method in use in all states or countries where the insurance applies, bears to the total premium so computed in all states or countries in which that nonadmitted insurance may apply. This provision shall not apply to interstate motor transit operations conducted between this and other states. With respect to those operations, surplus line tax shall be payable on the entire premium charged on all nonadmitted insurance, less the following:~~

~~(a) That portion of the premium as is determined, as herein provided, to have been charged for operations in other states taxing the premium on operations in those states of an insured maintaining its headquarters office in this state.~~

~~(b) The premium for any operations outside of this state of an insured who maintains a headquarters operating office outside of this state and a branch office in this state.~~

~~A penalty of 10 percent of the amount of the payment due shall be levied upon and paid by any surplus line broker who fails to make the necessary payment within the time required, plus interest at the rate of 1 percent per calendar month or fraction thereof, from March 1, the due date of the annual tax, until the date the payment is received by the State Board of Equalization. The State Board of Equalization, upon a showing of good cause, may extend for not to exceed 30 days, the time for filing a tax return or paying any amount required to be paid with the return. The extension may be granted at any time, provided that a request therefor is filed with the State~~

~~Board of Equalization within, or prior to, the period for which the extension may be granted.~~

~~Any surplus line broker to whom an extension is granted shall, in addition to the tax, pay interest at the rate of 1 percent per month or fraction thereof from March 1, until the date of payment. The State Board of Equalization may remit the penalty in a case where the State Board of Equalization finds, as a result of examination or otherwise, that the failure of or delay in payment arose out of excusable mistake or excusable inadvertence.~~

~~For any part of a payment required by this section or by Section 1775.4 that was not made within the time required by law, when nonpayment or late payment was due to fraud on the part of the broker, a penalty of 25 percent of the amount unpaid shall be added thereto, in addition to all other penalties otherwise imposed.~~

~~SEC. 15. Section 1775.6 of the Insurance Code is amended to read:~~

~~1775.6. All tax moneys received by the State Board of Equalization pursuant to this chapter shall be transmitted to the Treasurer to be deposited in the State Treasury to the credit of the Insurance Tax Fund. Upon transmitting moneys to the Treasurer, the State Board of Equalization shall furnish the Controller with a record of the amount transmitted and the surplus line brokers from whom the moneys have been received.~~

~~SEC. 16. Section 1775.7 of the Insurance Code is amended to read:~~

~~1775.7. The money in the Insurance Tax Fund received from the State Board of Equalization pursuant to Section 1775.6 is hereby appropriated as follows:~~

~~(a) To pay the refunds authorized by this chapter.~~

~~(b) The balance of the money in the fund shall, on order of the Controller, be transferred to the State General Fund.~~

~~SEC. 17. Section 1775.8 of the Insurance Code is amended to read:~~

~~1775.8. (a) On and after January 1, 1994, and before January 1, 1995, every surplus line broker whose annual~~

1 ~~taxes for business done in calendar year 1992 or whose~~
2 ~~quarterly taxes for business done in calendar year 1993~~
3 ~~exceed fifty thousand dollars (\$50,000) shall make~~
4 ~~payment by electronic funds transfer. On and after~~
5 ~~January 1, 1995, every surplus line broker whose annual~~
6 ~~taxes for business done in calendar year 1993 or in any~~
7 ~~calendar year thereafter exceed twenty thousand dollars~~
8 ~~(\$20,000) shall make payment by electronic funds~~
9 ~~transfer. The surplus line broker shall choose one of the~~
10 ~~acceptable methods described in Section 45 for~~
11 ~~completing the electronic funds transfer.~~

12 ~~(b) Payment is deemed complete on the date the~~
13 ~~electronic funds transfer is initiated, if settlement to the~~
14 ~~state's demand account occurs on or before the banking~~
15 ~~day following the date the transfer is initiated. If~~
16 ~~settlement to the state's demand account does not occur~~
17 ~~on or before the banking day following the date the~~
18 ~~transfer is initiated, payment is deemed to occur on the~~
19 ~~date settlement occurs.~~

20 ~~(c) (1) Any surplus line broker required to remit~~
21 ~~taxes by electronic funds transfer pursuant to this section~~
22 ~~who remits those taxes by means other than an~~
23 ~~appropriate electronic funds transfer, shall be assessed a~~
24 ~~penalty in an amount equal to 10 percent of the taxes due~~
25 ~~at the time of the payment.~~

26 ~~(2) If the State Board of Equalization finds that a~~
27 ~~surplus line broker's failure to make payment by an~~
28 ~~appropriate electronic funds transfer in accordance with~~
29 ~~subdivision (a) is due to reasonable cause or~~
30 ~~circumstances beyond the surplus line broker's control,~~
31 ~~and occurred notwithstanding the exercise of ordinary~~
32 ~~care and in the absence of willful neglect, that surplus line~~
33 ~~broker shall be relieved of the penalty provided in~~
34 ~~paragraph (1).~~

35 ~~(3) Any surplus line broker seeking to be relieved of~~
36 ~~the penalty provided in paragraph (1) shall file with the~~
37 ~~State Board of Equalization a statement under penalty of~~
38 ~~perjury setting forth the facts upon which the claim for~~
39 ~~relief is based.~~

1 ~~SEC. 18. Section 1775.9 of the Insurance Code is~~
2 ~~amended to read:~~

3 ~~1775.9. (a) If the State Board of Equalization~~
4 ~~determines that the amount of tax reported by the surplus~~
5 ~~line broker is less than the tax disclosed by the State Board~~
6 ~~of Equalization's examination, the State Board of~~
7 ~~Equalization shall permit the surplus line broker to~~
8 ~~provide additional information demonstrating that the~~
9 ~~surplus line broker owes a lesser amount. If within 60~~
10 ~~days, or any additional time as the State Board of~~
11 ~~Equalization deems appropriate, the State Board of~~
12 ~~Equalization and the surplus line broker cannot agree on~~
13 ~~the amount owed, the State Board of Equalization shall~~
14 ~~make a deficiency assessment for the difference pursuant~~
15 ~~to Section 12422 of the Revenue and Taxation Code.~~

16 ~~(b) Article 3 (commencing with Section 12421) of~~
17 ~~Chapter 4 of, and Article 1 (commencing with Section~~
18 ~~12951) and Article 2 (commencing with Section 12977) of~~
19 ~~Chapter 7 of, Part 7 of Division 2 of the Revenue and~~
20 ~~Taxation Code shall apply to surplus line brokers, except~~
21 ~~where inconsistent with the provisions of this chapter, in~~
22 ~~which case this chapter shall govern.~~

23 ~~SEC. 19. Section 1776 of the Insurance Code is~~
24 ~~amended to read:~~

25 ~~1776. Any surplus line broker who willfully fails or~~
26 ~~refuses to report to the commissioner and the State Board~~
27 ~~of Equalization any insurance on subject matter located~~
28 ~~within this state placed under his or her name with~~
29 ~~nonadmitted insurers, or who, by willful omission from~~
30 ~~the records required to be maintained by him or her for~~
31 ~~that purpose, attempts to evade the payment of taxes on~~
32 ~~that insurance, is, in addition to being required to pay the~~
33 ~~tax, together with a penalty equal in amount to the tax,~~
34 ~~guilty of a misdemeanor.~~

35 ~~It is a misdemeanor for any surplus line broker or~~
36 ~~special lines' surplus line broker to accept or pay directly~~
37 ~~or indirectly any consideration or remuneration for or in~~
38 ~~connection with the placing of insurance which, if done~~
39 ~~by a person within this state, is governed by the provisions~~

~~1 of this chapter, when that placing was not done by a
2 person licensed therefor pursuant to this chapter.~~

~~3 It is a misdemeanor for any agent or broker to solicit,
4 negotiate, or effect any insurance governed by the
5 provisions of this chapter in nonadmitted insurers, except
6 by and through a surplus line broker or special lines'
7 surplus line broker licensed pursuant to this chapter.
8 Except in the case of insurance specified in subdivision
9 (b) of Section 1760.5, it is a misdemeanor for any surplus
10 line broker or special lines' surplus line broker to accept,
11 place, pay, or permit the payment of commission or other
12 remuneration on insurance placed by him or her under
13 authority of his or her license to any person other than one
14 holding a license to act as an insurance agent, insurance
15 broker, surplus line broker, or special lines' surplus line
16 broker, except that the business may be accepted by the
17 surplus line broker or special lines' surplus line broker
18 directly from an assured or other person who would
19 likewise be entitled to place the same directly with an
20 admitted insurer without the solicitation, negotiation, or
21 effecting thereof by an insurance agent or broker.~~

~~22 The commissioner may deny, suspend, or revoke any
23 license issued pursuant to this code if he or she finds after
24 notice and hearing in accordance with the procedure
25 provided in Article 13 (commencing with Section 1737)
26 of Chapter 5 that the licensee has violated any provisions
27 of this section.~~

~~28 The permission granted in this chapter to place any
29 insurance in a nonadmitted insurer shall not be deemed
30 or construed to authorize that nonadmitted insurer to do
31 business in this state.~~

~~32 Placement activities of a licensed surplus line broker in
33 accordance with this chapter, including, but not limited
34 to, policy issuance, shall not be deemed or construed to be
35 business done by the insurer in this state.~~

~~36 SEC. 20. Section 1779 of the Insurance Code is
37 amended to read:~~

~~38 1779. Every insured for whom insurance has been
39 effected with nonadmitted insurers shall, upon request in
40 writing by the commissioner or the State Board of~~

~~Equalization, produce for the commissioner's or the State Board of Equalization's examination all policies, contracts, and other documents evidencing that insurance, and shall disclose to the commissioner or the State Board of Equalization the amount of the gross premiums paid or agreed to be paid for that insurance. For refusal to obey a request as described in this section, an insured shall forfeit to the State of California the sum of one thousand dollars (\$1,000) for each refusal.~~

~~SEC. 21. Section 12973.6 of the Insurance Code is amended to read:~~

~~12973.6. If a check in payment of a tax, fee, or penalty is not paid by the bank on which it is drawn on its first presentation, the commissioner or the State Board of Equalization shall charge and collect an additional fee sufficient to reimburse the commissioner or the State Board of Equalization for incurred costs.~~

~~SEC. 22. Section 12976 of the Insurance Code is amended to read:~~

~~12976. All fines, forfeitures, taxes, assessments, and penalties provided for in this code shall be due and payable on the demand of the commissioner or the State Board of Equalization, as applicable. If payment is not made within 10 days after the demand, then the commissioner shall institute an action in the name of the people of the State of California for the purpose of recovering the moneys due. All of these actions shall be subject to all the provisions of the Code of Civil Procedure which may be applicable thereto.~~

~~SEC. 23. Section 12976.5 of the Insurance Code is amended to read:~~

~~12976.5. (a) On and after January 1, 1994, and before January 1, 1995, every insurer whose annual taxes exceed fifty thousand dollars (\$50,000) shall make payment by electronic funds transfer. On and after January 1, 1995, every insurer whose annual taxes exceed twenty thousand dollars (\$20,000) shall make payment by electronic funds transfer. The insurer shall choose one of the acceptable methods described in Section 45 for completing the electronic funds transfer.~~

~~(b) Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.~~

~~(c) (1) Any insurer required to remit taxes by electronic funds transfer pursuant to this section who remits those taxes by means other than an appropriate electronic funds transfer, shall be assessed a penalty in an amount equal to 10 percent of the taxes due at the time of the payment.~~

~~(2) If the State Board of Equalization finds that an insurer's failure to make payment by an appropriate electronic funds transfer in accordance with subdivision (a) is due to reasonable cause or circumstances beyond the insurer's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that insurer shall be relieved of the penalty provided in paragraph (1).~~

~~(3) Any insurer seeking to be relieved of the penalty provided in paragraph (1) shall file with the State Board of Equalization a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.~~

~~SEC. 24. Section 12009 is added to the Revenue and Taxation Code, to read:~~

~~12009. The commissioner shall inform the board of the identity of any insurer, surplus line broker, or other company that is subject to tax under this part or the Insurance Code. If the commissioner has issued an authorization to transact business in this state to any insurer, surplus line broker, or other company, the commissioner shall furnish a copy of that authorization to the board.~~

~~SEC. 25. Section 12222 of the Revenue and Taxation Code is amended to read:~~

~~12222. Funds accepted by a life insurer under an agreement that provides for an accumulation of funds to purchase annuities at future dates may be considered as “gross premiums received” either upon receipt or upon the actual application of those funds to the purchase of annuities. However, any interest credited to funds accumulated while under the latter alternative shall also be included in “gross premiums received,” and any funds taxed upon receipt, including any interest later credited thereto, shall not be subject to taxation upon the purchase of annuities. Each life insurer shall signify on its premium tax return covering premiums for the calendar year 1957 its election between these two alternatives. Thereafter, an insurer shall not change its election without the consent of the board. Any funds taxed as “gross premiums” shall, in the event of withdrawal of the funds before their actual application to the purchase of annuities, be eligible to be included as “return premiums” if eligible therefor under the provisions of Section 28 of Article XIII of the California Constitution.~~

~~SEC. 26. Section 12253 of the Revenue and Taxation Code is amended to read:~~

~~12253. Each insurer required to make prepayments shall remit them on or before each of the dates of April 1st, June 15th, September 15th, and December 15th of the current calendar year. Remittances for prepayments shall be made payable to the board and shall be delivered to the board, accompanied by a prepayment form prescribed by the board.~~

~~SEC. 27. Section 12255 of the Revenue and Taxation Code is amended to read:~~

~~12255. The board, for good cause shown, may extend for not to exceed 10 days the time for making a prepayment. The extension may be granted at any time, provided that a request therefor is filed with the board within or prior to the period for which the extension may be granted. Interest at the rate prescribed by Section 12631 shall be paid for the period of time for which the extension is granted.~~

1 ~~SEC. 28. Section 12260 of the Revenue and Taxation~~
2 ~~Code is amended to read:~~

3 ~~12260. Notwithstanding any other provision of this~~
4 ~~article, the board may relieve an insurer of its obligation~~
5 ~~to make prepayments where the insurer establishes to the~~
6 ~~satisfaction of the board that either the insurer has ceased~~
7 ~~to transact insurance in this state, or the insurer's annual~~
8 ~~tax for the current year will be less than five thousand~~
9 ~~dollars (\$5,000).~~

10 ~~SEC. 29. Section 12281 of the Revenue and Taxation~~
11 ~~Code is amended to read:~~

12 ~~12281. Annually, on or before April 1, each insurer~~
13 ~~subject to the imposition of retaliatory exactions shall file~~
14 ~~with the board, in accordance with regulations~~
15 ~~promulgated by it, a retaliatory tax return in the form~~
16 ~~prescribed by the board. Annually, on or before June 15th,~~
17 ~~each insurer subject to the imposition of ocean marine~~
18 ~~taxes shall amend its retaliatory tax return by filing with~~
19 ~~the board, an amended ocean marine retaliatory tax~~
20 ~~return in the form prescribed by the board.~~

21 ~~SEC. 30. Section 12302 of the Revenue and Taxation~~
22 ~~Code is amended to read:~~

23 ~~12302. On or before April 1st (or June 15th with~~
24 ~~respect to taxes on ocean marine insurance) every person~~
25 ~~who is subject to any tax imposed by the provisions of~~
26 ~~Section 28 of Article XIII of the California Constitution or~~
27 ~~of this part, in respect to the preceeding calendar year shall~~
28 ~~file an insurance tax return with the board in that form~~
29 ~~as the board may prescribe. The return shall show that~~
30 ~~information pertaining to its insurance business in this~~
31 ~~state as will reflect the basis of its tax as set forth in~~
32 ~~Chapter 2 (commencing with Section 12071) and~~
33 ~~Chapter 3 (commencing with Section 12201), the~~
34 ~~computation of the amount of tax for the period covered~~
35 ~~by the return, the total amount of any tax prepayments~~
36 ~~made pursuant to Article 5 (commencing with Section~~
37 ~~12251) of Chapter 3, and any other information as the~~
38 ~~board may require to carry out the purposes of this part.~~
39 ~~Separate returns shall be filed with respect to the~~
40 ~~following kinds of insurance:~~

1 ~~(a) Life insurance (or life insurance and disability~~
2 ~~insurance).~~

3 ~~(b) Ocean marine insurance.~~

4 ~~(c) Title insurance.~~

5 ~~(d) Insurance other than life insurance (or life~~
6 ~~insurance and disability insurance), ocean marine~~
7 ~~insurance, or title insurance.~~

8 ~~SEC. 31. Section 12303 of the Revenue and Taxation~~
9 ~~Code is amended to read:~~

10 ~~12303. Every return required by this article to be filed~~
11 ~~with the board shall be signed by the insurer or an~~
12 ~~executive officer of the insurer and shall be made under~~
13 ~~oath or contain a written declaration that it is made under~~
14 ~~the penalties of perjury. A return of a foreign insurer may~~
15 ~~be signed and verified by its manager residing within this~~
16 ~~state. A return of an alien insurer may be signed and~~
17 ~~verified by the United States manager of that insurer.~~

18 ~~SEC. 32. Section 12304 of the Revenue and Taxation~~
19 ~~Code is amended to read:~~

20 ~~12304. Blank forms of returns shall be furnished by the~~
21 ~~board on application, but failure to secure a form shall not~~
22 ~~relieve any insurer from making or filing a timely return.~~

23 ~~SEC. 33. Section 12305 of the Revenue and Taxation~~
24 ~~Code is amended to read:~~

25 ~~12305. The insurer required to file a return shall~~
26 ~~deliver the return, together with a remittance payable to~~
27 ~~the Controller, for the amount of tax computed and~~
28 ~~shown thereon, less any prepayments made pursuant to~~
29 ~~Article 5 (commencing with Section 12251) of Chapter 3,~~
30 ~~to the board.~~

31 ~~SEC. 34. Section 12306 of the Revenue and Taxation~~
32 ~~Code is amended to read:~~

33 ~~12306. The board, for good cause shown, may extend~~
34 ~~for not to exceed 30 days the time for filing a tax return~~
35 ~~or paying any amount required to be paid with the return.~~
36 ~~The extension may be granted at any time, provided that~~
37 ~~a request therefor is filed with the board within or prior~~
38 ~~to the period for which the extension may be granted.~~

39 ~~SEC. 35. Section 12411 of the Revenue and Taxation~~
40 ~~Code is repealed.~~

~~SEC. 36. Section 12412 of the Revenue and Taxation Code is amended to read:~~

~~12412. Upon receipt of the return of an insurer, the board shall initially assess the tax in accordance with the data as reported by the insurer on the return.~~

~~SEC. 37. Section 12413 of the Revenue and Taxation Code is amended to read:~~

~~12413. The board shall promptly transmit notice of its initial assessment to the Controller, and if the initial assessment differs from the amount computed by the insurer, notice shall also be given to the insurer.~~

~~SEC. 38. Section 12421 of the Revenue and Taxation Code is amended to read:~~

~~12421. As soon as practicable after an insurer's or surplus line broker's return is filed, the board shall examine it, together with any information within the board's possession or that may come into the board's possession, and the board shall determine the correct amount of tax of the insurer or surplus line broker.~~

~~SEC. 39. Section 12422 of the Revenue and Taxation Code is amended to read:~~

~~12422. If the board determines that the amount of tax disclosed by the insurer's or surplus line broker's tax return and assessed by the board is less than the amount of tax disclosed by its examination, the board shall make a deficiency assessment for the difference.~~

~~SEC. 40. Section 12423 of the Revenue and Taxation Code is amended to read:~~

~~12423. If an insurer or surplus line broker fails to file a return, the board may require a return by mailing notice to the insurer or surplus line broker to file a return by a specified date. The board may, without requiring a return, or upon no return having been filed pursuant to the demand therefor, make an estimate of the amount of tax due for the calendar year or years in respect to which the insurer or surplus line broker failed to file the return. The estimate shall be made from any available information that is in the board's possession or may come into its possession. The board shall make a deficiency assessment for the amount of the estimated tax.~~

1 ~~SEC. 41. Section 12424 of the Revenue and Taxation~~
2 ~~Code is repealed.~~

3 ~~SEC. 42. Section 12425 of the Revenue and Taxation~~
4 ~~Code is amended to read:~~

5 ~~12425. One or more deficiency assessments may be~~
6 ~~made for the amount of tax due for one or for more than~~
7 ~~one calendar year.~~

8 ~~SEC. 43. Section 12428 of the Revenue and Taxation~~
9 ~~Code is amended to read:~~

10 ~~12428. An insurer or surplus line broker against whom~~
11 ~~a deficiency assessment is made under Section 12422,~~
12 ~~12423, or 12425 may petition for redetermination of the~~
13 ~~deficiency assessment within 30 days after service upon~~
14 ~~the insurer or surplus line broker of the notice thereof, by~~
15 ~~filing with the board a written petition setting forth the~~
16 ~~grounds of objection to the deficiency assessment and the~~
17 ~~correction sought.~~

18 ~~If a petition for redetermination is not filed within the~~
19 ~~period prescribed by this section, the deficiency~~
20 ~~assessment becomes final and due and payable at the~~
21 ~~expiration of that period.~~

22 ~~SEC. 44. Section 12429 of the Revenue and Taxation~~
23 ~~Code is amended to read:~~

24 ~~12429. If a petition for redetermination of a deficiency~~
25 ~~assessment is filed within the time allowed under Section~~
26 ~~12428, the board shall reconsider the deficiency~~
27 ~~assessment and, if the insurer or surplus line broker has~~
28 ~~so requested in the petition, shall grant an oral hearing for~~
29 ~~the presentation of evidence and argument before the~~
30 ~~board or its authorized representative. The board shall~~
31 ~~give the petitioner at least 20 days' notice of the time and~~
32 ~~place of hearing. The hearing may be continued from~~
33 ~~time to time as may be necessary.~~

34 ~~SEC. 45. Section 12430 of the Revenue and Taxation~~
35 ~~Code is amended to read:~~

36 ~~12430. The board may decrease or increase the~~
37 ~~amount of the deficiency assessment before the~~
38 ~~deficiency assessment becomes final, but the amount may~~
39 ~~be increased only if a claim for the increase is asserted by~~
40 ~~the board at or before the hearing.~~

1 ~~SEC. 46. Section 12434 of the Revenue and Taxation~~
2 ~~Code is amended to read:~~

3 ~~12434. Any notice required by this article shall be~~
4 ~~placed in a sealed envelope, with postage paid, addressed~~
5 ~~to the insurer or surplus line broker at his or her address~~
6 ~~as it appears in the records of the board. The giving of~~
7 ~~notice shall be deemed complete at the time of deposit of~~
8 ~~the notice in the United States Post Office, or a mailbox,~~
9 ~~sub-post office, substation or mail chute or other facility~~
10 ~~regularly maintained or provided by the United States~~
11 ~~Postal Service, without extension of time for any reason.~~
12 ~~In lieu of mailing, a notice may be served personally by~~
13 ~~delivering to the person to be served and service shall be~~
14 ~~deemed complete at the time of that delivery. Personal~~
15 ~~service to a corporation may be made by delivery of a~~
16 ~~notice to any person designated in the Code of Civil~~
17 ~~Procedure to be served for the corporation with~~
18 ~~summons and complaint in a civil action.~~

19 ~~SEC. 47. Section 12435 of the Revenue and Taxation~~
20 ~~Code is amended to read:~~

21 ~~12435. A copy of each notice of a deficiency~~
22 ~~assessment made by the board shall be transmitted to the~~
23 ~~Controller. The Controller shall keep an appropriate~~
24 ~~record of all these assessments and any payments~~
25 ~~thereon.~~

26 ~~SEC. 48. Section 12601 of the Revenue and Taxation~~
27 ~~Code is amended to read:~~

28 ~~12601. Amounts of taxes, interest, and penalties not~~
29 ~~remitted to the board with the original return of the~~
30 ~~insurer or surplus line broker shall be payable to the~~
31 ~~board.~~

32 ~~SEC. 49. Section 12602 of the Revenue and Taxation~~
33 ~~Code is amended to read:~~

34 ~~12602. (a) On and after January 1, 1994, and before~~
35 ~~January 1, 1995, each insurer whose annual taxes exceed~~
36 ~~fifty thousand dollars (\$50,000) shall make payment by~~
37 ~~electronic funds transfer, as defined by Section 45 of the~~
38 ~~Insurance Code. On and after January 1, 1995, each~~
39 ~~insurer whose annual taxes exceed twenty thousand~~
40 ~~dollars (\$20,000) shall make payment by electronic funds~~

1 ~~transfer. The insurer shall choose one of the acceptable~~
2 ~~methods described in Section 45 of the Insurance Code~~
3 ~~for completing the electronic funds transfer.~~

4 ~~(b) Payment is deemed complete on the date the~~
5 ~~electronic funds transfer is initiated, if settlement to the~~
6 ~~state's demand account occurs on or before the banking~~
7 ~~day following the date the transfer is initiated. If~~
8 ~~settlement to the state's demand account does not occur~~
9 ~~on or before the banking day following the date the~~
10 ~~transfer is initiated, payment is deemed to occur on the~~
11 ~~date settlement occurs.~~

12 ~~(e) (1) Any insurer required to remit taxes by~~
13 ~~electronic funds transfer pursuant to this section who~~
14 ~~remit those taxes by means other than an appropriate~~
15 ~~electronic funds transfer, shall be assessed a penalty in an~~
16 ~~amount equal to 10 percent of the taxes due at the time~~
17 ~~of the payment.~~

18 ~~(2) If the board finds that an insurer's failure to make~~
19 ~~payment by an appropriate electronic funds transfer in~~
20 ~~accordance with subdivision (a) is due to reasonable~~
21 ~~cause or circumstances beyond the insurer's control, and~~
22 ~~occurred notwithstanding the exercise of ordinary care~~
23 ~~and in the absence of willful neglect, that insurer shall be~~
24 ~~relieved of the penalty provided in paragraph (1).~~

25 ~~(3) Any insurer seeking to be relieved of the penalty~~
26 ~~provided in paragraph (1) shall file with the board a~~
27 ~~statement under penalty of perjury setting forth the facts~~
28 ~~upon which the claim for relief is based.~~

29 ~~SEC. 50. Section 12633 of the Revenue and Taxation~~
30 ~~Code is amended to read:~~

31 ~~12633. When a deficiency assessment is made~~
32 ~~pursuant to Section 12423, a penalty of 10 percent of the~~
33 ~~amount of the deficiency assessment shall be added~~
34 ~~thereto.~~

35 ~~SEC. 51. Section 12634 of the Revenue and Taxation~~
36 ~~Code is amended to read:~~

37 ~~12634. When a deficiency assessment is made~~
38 ~~pursuant to Section 12422, and any part of the deficiency~~
39 ~~is due to negligence or intentional disregard of this part~~
40 ~~or rules and regulations adopted to implement this part,~~

~~1 or the Insurance Code, but without intent to defraud, a~~
~~2 penalty of 10 percent of the amount of the deficiency~~
~~3 assessment shall be added thereto.~~

~~4 SEC. 52. Section 12952 of the Revenue and Taxation~~
~~5 Code is repealed.~~

~~6 SEC. 53. Section 12978 of the Revenue and Taxation~~
~~7 Code is amended to read:~~

~~8 12978. No credit or refund shall be allowed or~~
~~9 approved after four years after April 1st of the year~~
~~10 following the year for which the overpayment was made,~~
~~11 or with respect to a deficiency assessment made under~~
~~12 Article 3 (commencing with Section 12421) of Chapter 4~~
~~13 after six months from the date the deficiency assessment~~
~~14 becomes final, or after six months from the date of the~~
~~15 overpayment, whichever period expires the later, unless~~
~~16 a claim therefor is filed with the board within that period.~~

~~17 SEC. 54. Section 12982 of the Revenue and Taxation~~
~~18 Code is repealed.~~

~~19 SEC. 55. Section 13151 of the Revenue and Taxation~~
~~20 Code is amended to read:~~

~~21 13151. All taxes, interest, and penalties collected~~
~~22 under this part shall be transmitted to the Treasurer to be~~
~~23 deposited in the State Treasury to the credit of the~~
~~24 Insurance Tax Fund, which is hereby created. Upon~~
~~25 transmitting moneys to the Treasurer, the board shall~~
~~26 furnish the Controller with a record of the amounts~~
~~27 transmitted and the insurers from whom the moneys~~
~~28 have been received.~~

~~29 SEC. 56. Section 13170 of the Revenue and Taxation~~
~~30 Code is amended to read:~~

~~31 13170. The board and the Controller may each~~
~~32 prescribe, adopt, and enforce rules and regulations~~
~~33 relating to the administration and enforcement of this~~
~~34 part for which the agency has a constitutional or statutory~~
~~35 responsibility. Each agency may prescribe the extent to~~
~~36 which any rule and regulation it has adopted shall be~~
~~37 applied without retroactive effect.~~

~~38 SEC. 57. Section 13171 is added to the Revenue and~~
~~39 Taxation Code, to read:~~

1 ~~13171. The board may employ accountants, auditors,~~
2 ~~investigators, assistants, and clerks necessary for the~~
3 ~~efficient administration of this part and may designate~~
4 ~~representatives to conduct hearings, prescribe~~
5 ~~regulations, or perform any other duties imposed by this~~
6 ~~part or other laws of this state upon the board.~~

7 ~~SEC. 58. Section 13172 is added to the Revenue and~~
8 ~~Taxation Code, to read:~~

9 ~~13172. Notwithstanding any other provision of law,~~
10 ~~each insurer and surplus line broker shall maintain~~
11 ~~complete records of the business done in this state in that~~
12 ~~form as the board may require to substantiate the returns~~
13 ~~made, or if no return is made, to ascertain and determine~~
14 ~~the business done in this state by that insurer or surplus~~
15 ~~line broker.~~

16 ~~SEC. 59. Section 13173 is added to the Revenue and~~
17 ~~Taxation Code, to read:~~

18 ~~13173. Notwithstanding any other provision of law,~~
19 ~~the board, or any person authorized in writing by the~~
20 ~~board, may examine all books, records, accounts, papers,~~
21 ~~documents, and any or all computer or other recordings~~
22 ~~relating to the property, assets, business, and affairs of the~~
23 ~~insurer or surplus line broker being examined, in order to~~
24 ~~verify the accuracy of the return made, or, if no return is~~
25 ~~made, to ascertain and determine the amount required~~
26 ~~to be paid by that insurer and surplus line broker.~~

27 ~~SEC. 60. Section 13174 is added to the Revenue and~~
28 ~~Taxation Code, to read:~~

29 ~~13174. Notwithstanding any other provision of law,~~
30 ~~the commissioner shall provide the board with any~~
31 ~~information relating to the administration and~~
32 ~~enforcement of this part or any portion of the Insurance~~
33 ~~Code under which the board has a constitutional or~~
34 ~~statutory responsibility.~~

35 ~~SEC. 61.~~

36 ~~SECTION 1. The sum of nine hundred seven~~
37 ~~thousand five hundred ninety-five dollars (\$907,595) is~~
38 ~~hereby appropriated from the General Fund to the State~~
39 ~~Board of Equalization Department of Insurance for the~~
40 ~~purpose of funding, for the 1997-98 fiscal year, the~~

- 1 ~~transfer~~ of the tax audit duties of the Department of
- 2 Insurance to the State Board of Equalization.

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